

MAINE STATE LEGISLATURE

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131st MAINE LEGISLATURE

FIRST SPECIAL SESSION-2023

Legislative Document

No. 1776

H.P. 1139

House of Representatives, April 25, 2023

An Act to Allow Citizen Oversight of Department of Environmental Protection and Department of Marine Resources Actions and Rulemaking

Reference to the Committee on State and Local Government suggested and ordered printed.

A handwritten signature in cursive script that reads "Robert B. Hunt".

ROBERT B. HUNT
Clerk

Presented by Representative WORTH of Ellsworth.

Cosponsored by Representatives: DHALAC of South Portland, HOBBS of Wells, MILLIKEN of Blue Hill, MURPHY of Scarborough, SARGENT of York.

1 **Be it enacted by the People of the State of Maine as follows:**

2 **Sec. 1. 5 MRSA §9065** is enacted to read:

3 **§9065. Public oversight**

4 **1. Public oversight.** Notwithstanding the provisions of this chapter, a person in the
5 State may exercise oversight of agency actions and rulemaking under this section.

6 **2. Petition.** Any person in the State may petition the Department of Environmental
7 Protection, the Department of Marine Resources or the Attorney General, as a named
8 person or anonymously through a process developed by the Attorney General in
9 cooperation with the Department of Labor for the protection of whistleblowers or
10 anonymous complainants who demonstrate a need for protection, to enforce a law
11 regarding the Department of Environmental Protection or the Department of Marine
12 Resources, to enforce or amend a Department of Environmental Protection or Department
13 of Marine Resources rule or to intervene in a rule-making or enforcement proceeding of
14 the Department of Environmental Protection or the Department of Marine Resources that
15 protects or conserves a natural resource, the environment, public health or freedom of
16 information, including the common law. A petition under this subsection must set out a
17 sufficiently specific allegation supported by facts that provide reasonable cause to believe
18 an investigation or a new rule implementing existing law is warranted. If after 60 days of
19 receipt of the petition, except in the case of likely more immediate irreparable harm under
20 subsection 3, the Department of Environmental Protection, the Department of Marine
21 Resources or the Attorney General has not responded to the petition, the person may bring
22 an action in the appropriate court to enforce the law or rule or provide relief in law or equity
23 under the law or rule.

24 **3. Irreparable harm.** If irreparable harm to the person, the natural resource, the
25 environment, public health or freedom of information under subsection 2 is likely to occur,
26 the petitioner may file an action as soon as possible and the court shall schedule a hearing
27 on the petition in a timely manner and grant standing to the petitioner under this section.

28 **4. Attorney's fees and expert witness fees.** If a petition under subsection 2 survives
29 a motion to dismiss or the period of time in which a motion to dismiss is required to be
30 filed, the court shall award the petitioner initial reasonable attorney's fees, expert witness
31 fees and costs. If final judgment favors the petitioner, the court shall award complete
32 reasonable attorney's fees, expert witness fees and costs for any portion of the judgment
33 that favors the petitioner.

34 **5. Notice of rulemaking or issuance of permit.** The Department of Environmental
35 Protection or the Department of Marine Resources shall notify the public of a proposed
36 rule under Title 12, section 6191 or Title 38, section 341-H or the processing of a permit
37 application under Title 12, chapter 605, subchapter 2 or Title 38, section 344, describing
38 the scope and timing of any deliberative proceeding and the process of applying for
39 financial assistance under subsection 6.

40 **6. Financial assistance for participation in deliberative proceedings.** The
41 administrator under subsection 8 shall budget and award sufficient funds from the fund
42 under subsection 8 to ensure the participation of a person in the State responding to or
43 participating in a rule-making activity or processing of a permit application, except for the
44 applicant, to pay the expenses of legal services, expert witnesses and other costs reasonably

1 related to participation and providing testimony to a deliberative proceeding noticed under
2 subsection 5. The administrator under subsection 8 shall pay funds to a person who has
3 provided legal opinion or expert testimony or who has otherwise participated in a
4 deliberative proceeding noticed under subsection 5, except that the administrator may limit
5 an award under this subsection and subsection 7 that covers the reasonable expenses
6 concerning each point of contention to avoid a redundant fee award. This limitation may
7 be subject to interlocutory appeal to the appropriate court.

8 **7. Fee awards for administrative appeals or judicial review.** The administrator
9 under subsection 8 shall pay from the fund under subsection 8 initial attorney's fees, expert
10 witness fees and other reasonable expenses to a petitioner under an appeal or agency action
11 under this subchapter or judicial review of agency action under subchapter 7 that has a
12 reasonable evidentiary and legal basis and that survives a motion to dismiss or the period
13 in which a motion to dismiss is required to be filed. If the ruling or judgment grants relief
14 to the petitioner, the administrator under subsection 8 shall award reasonable attorney's
15 fees, witness fees and related costs to the petitioner from the fund under subsection 8.

16 **8. Fund for Oversight.** The Fund for Oversight is established to provide for attorney's
17 fees, expert witness fees and reasonable expenses under this section. The fund is
18 administered by an administrator, appointed by the Governor for a period of 4 years. The
19 administrator may impose fees on a person licensed or holding a permit under this Title
20 that allows the person to pollute the air, water or land or engage in consumptive commercial
21 use of natural resources of the State based upon the extent of consumptive or detrimental
22 use or pollution the license or permit allows and sufficient to cover the reasonable expenses
23 of the fund, the Department of Environmental Protection and the Department of Marine
24 Resources in issuing, overseeing and enforcing each permit and ensuring a reasonable
25 balance in the fund to fulfill the purposes of the fund, as determined by the administrator.
26 The fund is funded by appropriations, allocations, public and private sources and fees
27 imposed under this subsection. The fund is interest-bearing, and interest earned by the fund
28 is credited to the fund. The fund does not lapse but carries over to the next fiscal year.
29 Funds in the fund must be used to pay fees under subsections 6 and 7 and the cost of
30 administration of this section.

31 SUMMARY

32 This bill allows a person in the State to anonymously petition the Department of
33 Environmental Protection, the Department of Marine Resources or the Attorney General to
34 enforce a law regarding either department or to enforce or amend a rule of either department
35 that protects or conserves a natural resource, the environment, public health or freedom of
36 information, including the common law. If either department or the Attorney General does
37 not respond, the person may bring an action in court and win attorney's fees, expert witness
38 fees and other reasonable costs in certain circumstances. The bill also creates a fund for
39 oversight administered by an administrator appointed by the Governor to pay the legal
40 expenses, expert witness fees and other costs for people not seeking a permit for
41 commercial use but seeking to enforce a law or enforce or amend a department rule by
42 participating in adjudicatory and judicial proceedings regarding agency rulemaking and
43 issuance of licenses and permits.